

# MINUTES OF THE BOARD MEETING FOR THE DEPARTMENT OF LIVESTOCK

SPECIAL CONFERENCE CALL MEETING  
July 11, 2007  
DEPARTMENT OF LIVESTOCK BOARD ROOM  
HELENA, MONTANA

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## **July 11, 2007**

**Department of Livestock Board Room** by conference call (access number 1-888-447-7153 participant PIN 2851886

## **Call To Order**

Chairman Bill Hedstrom called the meeting to order at 10:10 a.m.

## **Attendance:**

### **Board of Livestock**

Bill Hedstrom, Meg Smith, Linda Nielsen, Janice French, George Hammond, Rebecca Weed, and Stan Boone.

### **Department Personnel**

Christian Mackay, Executive Officer, George Harris, Centralized Services Administrator; John Grainger, Brand Enforcement Administrator; Marty Clark, Brand Enforcement Assistant Administrator; Dr. Jeanne Rankin, Acting State Veterinarian, Animal Health; Clyde Huseby, Animal Health Compliance Officer; Clyde Peterson, Montana Attorney General's office; and Sherry Rust, Executive Secretary.

### **Public:**

Jim Morgan, Steve Morgan, Bruce Nelson, Governor's office; Matt Jennings, Senator Tester's office; Dale Mortinson and Seth Brodster, Representative Rheberg's office; Joe, Legislative Resource office; Eileen Rose, Budget office; Liz, Senator Baucus office; Dr. Lennis Knight, USDA APHIS AVIC; Errol Rice, MSGA; Glen Hockett; Barry Ellis; Steve Roth, MSGA; Pat Goggins; Ron Hudson; Mike Holgrem, Bank of the Rockies; Tom Daubert, Katie Kasmier, Farmers Union; Jay Bodner, Jayne Marie, Stockgrowers; Mike Groke, Friends of the Rockies.

### **Press Representatives:**

John Stefanic, KQTV, Billings; Terry Knapp, CBS; Montana Public Radio, Missoula; Great Falls Tribune; Russell Nimitz, Northern Ag Network; Ariel Overstreet, Agri-News; Shelly Gibbs, Western Livestock Reporter; Jacki Yamanaka, Yellowstone News; Sarah Cook, A.P.

## **Update of Testing and Results**

Christian Mackay, Executive Officer, said at this point all contact herds and trace out testing was completed with no further positive results. Approximately 2500 head were tested since May 18, 2007.

Dr. Rankin said herd plans for all contact herds are completed and signed. All required steps except depopulation of the index herd are now complete per USDA APHIS protocol . There is

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no indemnification agreement with USDA APHIS in place yet. The only remaining USDA APHIS requirement is the depopulation of the index herd by July 17, 2007. If depopulation is not completed by the 60 day limit Montana loses its class free status. The Department of Livestock has the authority to condemn the herd and depopulate even if no indemnity agreement is reached with USDA.

She continued that DOL personnel recently reported a quarantine violation with cattle from the index herd on neighbors' land and co-mingling with other livestock.

Comments included can DOL (or state of Montana) or individuals provide additional money to help. Dr. Knight, replied that APHIS protocol is that any money from the state or individuals must be deducted from any APHIS agreement monies. Should the Board of Livestock condemn and depopulate the herd, APHIS will pay the original appraisal amount. Administrative Rule 32-3-412 authorizes the Department of Livestock to order brucellosis herd depopulation without an MOU. Additionally, 81-1-302, Montana Code Annotated, provides the state veterinarian with the authority to order depopulation. The Board has the right to review and approve any such orders. This authority is outlined in Administrative Rule 32-2-102.

Board members expressed their sympathy for the Morgans and Ms. Hergenrider and their plight while recognizing the need for immediate action for the sake of all Montana producers.

Clyde Peterson, attorney from the state Attorney General's office, explained that the department has the authority to go onto the Morgan's land and depopulate prior to the 60 day deadline without an agreement.

Dr. Rankin said the herd must be depopulated or an agreement signed with APHIS prior to the 60 day deadline for Montana not to lose their class free status. If no agreement is reached and the herd is not depopulated prior to the July 17 (60 days) deadline the state will lose its class free status.

Dr. Knight, APHIS Area Veterinarian in Charge, explained that the indemnity agreement must be reached between APHIS and the Morgans/Hergenrider. At this time there is a gap between the dollar amount offered by APHIS and the amount Morgan/Hergenrider will accept. The possibility of wiggle room and APHIS offering more monetary compensation is being pursued by Dr. Clifford and APHIS is working on it.

### Proposed Motion

Dr. Rankin explained that working with legal counsel department personnel drafted a motion for the board to consider containing factual and legal findings and an Order by the Board of Livestock. Executive Officer Christian Mackay read the motion (see attached). Dr. Rankin said board approval of her recommendation is necessary to show that the department is acting in the best interest of producers in the state of Montana and requested a roll call vote. In the ensuing discussion board members again expressed sympathy for the herds' owners; questioned whether a board vote was required given state statutes authorizing the state vet to take necessary action; suggested every effort be made prior to depopulation to aid in reaching an agreement; expressed concern that animals from the quarantined herd had violated the quarantine by moving onto neighbors' land; and requested the motion be read again for clarification.

### Motion to Adopt

**Stan Boone moved to adopt the motion as presented by Executive Officer Christian**

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Mackay (copy attached). Jan French seconded.

### Public Comment:

Jim Morgan requested to set the record straight stating there was no negligence involved in the quarantine violation. His cattle are hungry, the pasture is eaten off and they went looking for feed in the neighbor's field. He explained how the APHIS appraiser made several mistakes between the initial onsite survey and the appraisal document. Approximately \$65,000 worth of mistakes which include:

- onsite tally of 16 bulls in the field – a total of 10 listed on the appraisal
- Karen Hergenrider's livestock were not even listed on the appraisal.

Following receipt of the APHIS appraisal they hired their own appraiser and submitted that figure to APHIS. No reply has been received from APHIS at this time. He commented there must be a better way. APHIS has all the say on value and the state has everything to lose.

Barry Ellis, Baker, co-owner of the animals sent to Iowa, agreed that their experience at Baker is similar to Morgan's at Bridger. Federal laws are outdated and need to be looked at.

Mike Holmberg, Bank of the Rockies Lewistown, expressed concern as a lien holder that no one had contacted them concerning the ongoing negotiations.

Bruce Malcolm commented that the Friday deadline only leaves tomorrow to get it done, and asked if it could be extended to 5:00 p.m. Friday.

Chairman Hedstrom explained the motion only deals with herd depopulation, not the indemnification (APHIS does that part by federal law.) The deadline must stand because of the logistics of moving the animals to a USDA approved facility for depopulation.

Executive Officer Christian Mackay said the department will do anything to help facilitate an indemnity agreement between APHIS & Morgans but the deadline must stand. Given the July 17th deadline facing the state, the department must allow enough time to build in the travel plans (gathering, loading, identification, arranging for trucks and the travel time) with the closest USDA facility in Yankton, S.D.

Dr. Rankin expressed her concern over the disease and ongoing quarantine issues (quarantined animals co-mingling with neighbors' livestock.)

Meg Smith questioned who delivered the quarantine order and when.

Dr. Rankin replied that the quarantine order was written on June 6, 2007. Clyde Huseby, Animal Health Compliance Officer, stated he hand delivered the order on or about June 6 to Morgans and Hergenrider. In reply to another question Dr. Rankin explained that herd plans are in place and the cost for future testing is unknown at this time.

Becky Weed asked if it was possible for a face to face meeting to facilitate an indemnity agreement. Suggesting that the meeting include APHIS personnel, a board representative, Dr. Rankin, the Morgans and Ms. Hergenrider.

Chairman Hedstrom again stated the motion only addresses depopulation of the herd. It does not cover indemnity agreements. Depopulation is the duty of the state, indemnity the duty of APHIS. If negotiations are not completed and the cattle not depopulated by the 17th the state losses it class free status.

When questioned by Jim Morgan regarding the first appraisal containing so many mistakes and what was being done by APHIS, Dr. Knight replied that the first appraisal is used as a baseline and they are still looking at the appraisal submitted by the Morgans. The problem is, there is not enough compensation money available at this time but APHIS is working on

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obtaining more funds.

### Roll Call Vote

Chairman Hedstrom called for a roll call vote following the comments from the public.

**Bill Hedstrom, yes; Jan French, yes; Meg Smith, abstain with comment (see below); Linda Nielsen, yes; Stan Boone, yes; Becky Weed, yes conditionally (see below); George Hammond, yes with same conditions as Becky Weed. The motion carried by a majority.**

### Board Member comments during the voice vote

Meg Smith cited 32-2-192 stating the state veterinarian must issue the order to depopulate and questioned the need for a board vote.

Becky Weed stated her yes vote with the condition the board act in good faith and make an effort to arrange a face to face meeting between APHIS, the Morgans & Hergenrider, Dr. Knight, and DOL/BOL representative to facilitate an indemnity agreement prior to the 13th deadline.

George Hammond voted yes with the same condition.

Chairman Hedstrom directed Mr. Mackay and Dr. Rankin to carry out the order if indemnity negotiations are not completed and an agreement made by the deadline set in the order.

Board consensus was to set up a meeting time for the above mentioned parties with Becky Weed volunteering to attend as representative of the board.

**The meeting was adjourned at 11:40 a.m.**

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BILL HEDSTROM, CHAIRMAN  
BOARD OF LIVESTOCK